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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 567

THE UNITED STATES OF AMERICA, APPELLANT

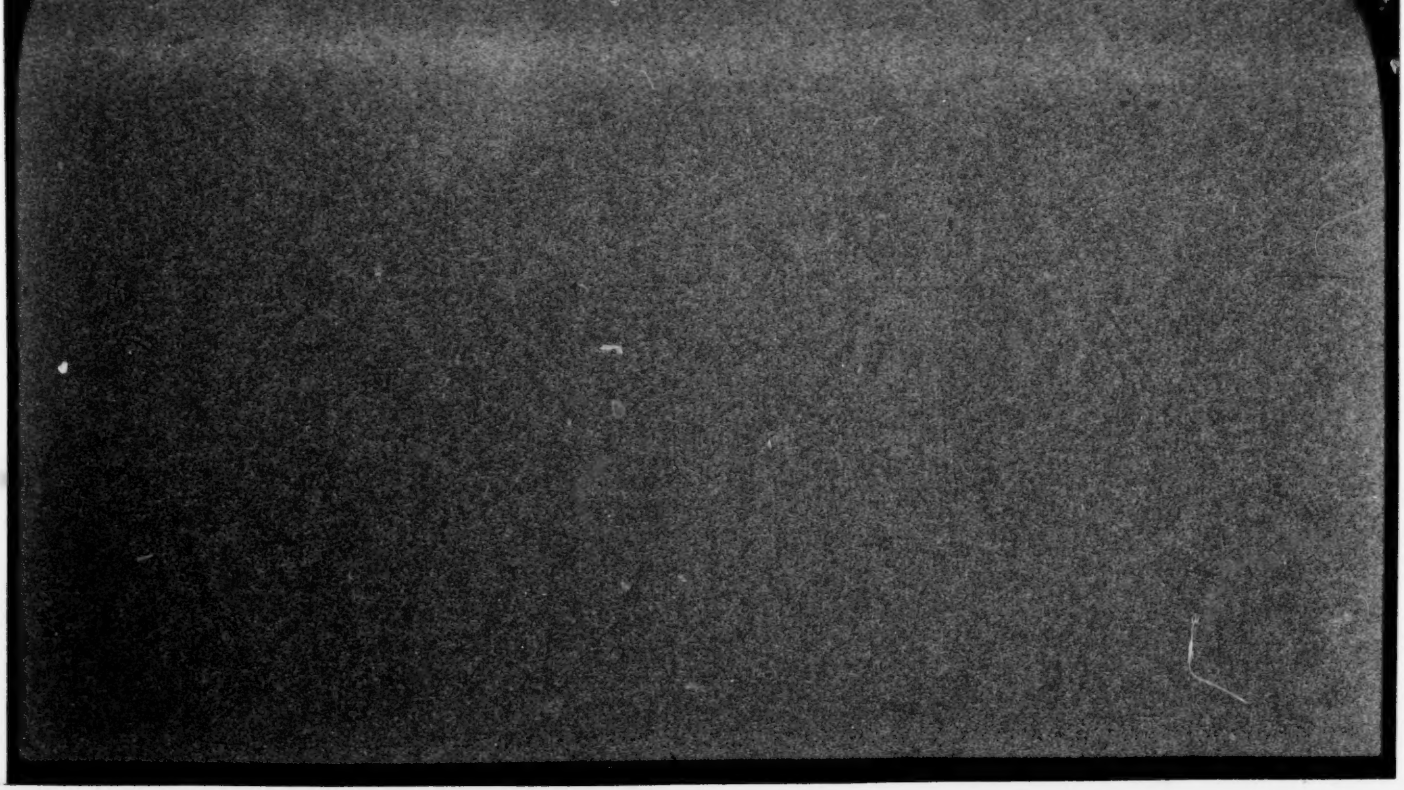
vs.

SANTOS FLORES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED DECEMBER 24, 1932

(37264)



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1 In United States District Court for the Eastern District of Pennsylvania

No. 4932, June term 1931

THE UNITED STATES
vs.
SANTOS FLORES

Edward W. Wells; J. V. Lovitt.

Docket entries

Sept. 10, 1931.	True bill.
Feb. 3, 1932.	Demurrer to indictment filed.
" 3, "	Stipulation of counsel as to certain facts filed.
" 3, "	Appearance of J. V. Lovitt, Esq., for defendant filed.
Mar. 2, 1932.	Argued sur demurrer.
" 4, "	Opinion, Dickinson, J., sustaining demurrer and discharging defendant without day, filed.
" 7, "	Order of court directing further argument on demurrer all proceedings to stay, etc., filed.
Oct. 26, 1932.	Re-argument sur demurrer.
Nov. 7, 1932.	Opinion, Dickinson, J., denying motion for reargument, filed.
" 7, "	Order of court sustaining demurrer to indictment, discharging defendant without day, exception thereto by plaintiff, and order allowing exception, filed.
" 16, "	Copy of certificate of judge filed.
Dec. 2, 1932.	Certificate that jurisdictional question is involved filed.
" 2, "	Assignments of error filed.
" 2, "	Petition for appeal and order of court allowing appeal filed.
Dec. 2, 1932.	Citation allowed and issued.
2 " 2, "	Statement of jurisdiction filed.
" 2, "	Service of copies of petition for appeal, order allowing appeal, assignments of error, and statementas to jurisdiction, and acknowledgement of service thereof, filed.
Dec. 2, 1932.	Citation returned, "service accepted" and filed.
" 7, "	Præcipe for transcript of record sur appeal filed.

3 In United States District Court

[Title omitted.]

Indictment

Filed Sept. 10, 1931

The grand inquest of the United States of America, inquiring in and for the Eastern District of Pennsylvania, upon their respective oaths and affirmations, respectfully do present that heretofore, to wit, on or about February 3rd, 1930, one Santos Flores, a subject of the United States of America, with force and arms, and by stabbing in the neck with a deadly weapon, to wit, a knife, and by other wounds and injuries, all wilfully, deliberately and feloniously done and committed by him, the said Santos Flores, did so
4 injure, assault, and mortally wound John Woolford, a citizen of the United States of America, all with premeditation, deliberation, and of malice aforethought in him, the said Santos Flores, that, as a direct and sole result of said felonious assault, mortal wounds, and injuries, he, the said John Woolford, at the place and within the jurisdiction hereinafter set forth, died, on February 4, 1930; all of which felonious assaults, injuries, stabbings, and mortal wounds were done and given by him, the said Santos Flores, to and upon the body of him, the said John Woolford, and the death of him, the said John Woolford, occurred within the admiralty and maritime jurisdiction of the United States of America and within the jurisdiction of this honorable court, to wit, in and on board a certain American vessel, to wit, the S. S. "Padnsay," a vessel then and there owned and operated by a citizen of the United States of America, while said vessel was within the admiralty and maritime jurisdiction of the United States of America and out of the jurisdiction of any particular State of said United States of America, to wit, during the time, February 3, 1930,
5 and February 4, 1930, when said vessel was at anchor in the harbor or port of Matadi, a port in Belgian Congo, which then and there was under and subject to the sovereignty of the Kingdom of Belgium; and he, the said Santos Flores, after the commission of said crime was first brought into the port of Philadelphia, which is within the Eastern District of Pennsylvania and within the jurisdiction of this court.

And so, the grand inquest aforesaid, upon their respective oaths and affirmations aforesaid, do present that he, the said Santos Flores, in manner and form aforesaid, feloniously, willfully, deliberately, with premeditation and of his malice aforethought, did kill and murder him, the said John Woolford, all at the time and within the jurisdiction aforesaid.

Contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America.

(s) EDWARD W. WELLS,
United States Attorney.

PHILADELPHIA, PA., *9th September, 1931.*

6 [Endorsed]

No. 4932, June sess., 1931.

District Court, United States, Eastern District of Penna.

The United States of America *vs.* Santos Flores

TRUE BILL

(s) PAUL BROOKS,
Foreman.

INDICTMENT

Murder.

WITNESSES

J. P. McCarthy.
Candido Ferreira, M. D.

Sec. 273, act 3-4-09.
35 Stat., pt. 1, p. 1088.

In United States District Court

[Title omitted.]

Demurrer to indictment

Filed Feb. 3, 1932

And now, to wit, Feb. 3, 1932, comes Santos Flores, the defendant, by his attorney, John V. Lovitt, esquire, and demurs to the indictment filed and assigns therefor the following reasons:

1. That the indictment charges no offense against the laws of the United States of America.

2. That the indictment shows on its face that the crime charged did not occur within the admiralty and maritime jurisdiction of the United States of America.

3. That this honorable court has no jurisdiction of the matters charged in the indictment.

(s) JOHN V. LOVITT,
Attorney for Defendant.

In United States District Court

[Title omitted.]

Stipulation of counsel as to certain facts

Filed Feb. 3, 1932

The following facts are hereby stipulated between counsel for the United States of America and counsel for the defendant, Santos Flores, so that the same are admitted with the force and effect as if a motion for a bill of particulars had been filed by the defendant, allowed by the court, and duly answered by United States of America:

1. The S. S. "Padsnay" at the time of the offense charged in the indictment was attached to the shore at the port of Matadi by means of cables and was unloading cargo by means of a cable and sling.

2. The port of Matadi is located on the Congo River approximately 250 miles inland from the mouth of said river. The said port is in the Belgian Congo, which then and there was under and subject to the sovereignty of the Kingdom of Belgium.

9 3. The S. S. "Padsnay" is registered under the laws and flew the flag of the United States of America and at all times reievent to the offense charged in the indictment was owned and operated by citizens of the United States of America.

4. John Woolford, the deceased, was at the time of his death a citizen of United States of America as was and is Santos Flores, the defendant.

5. The defendant, after commission of the alleged crime, was returned to the United States of America at Philadelphia, where he was delivered to the United States marshal.

(s) EDWARD W. WELLS,
United States Attorney,
Attorney for Complainant.

(s) JOHN V. LOVITT,
Attorney for Defendant.

Dated, February 3, 1932.

10 In United States District Court

[Title omitted.]

Opinion sur demurrer to indictment

Filed March 4, 1932

DICKINSON, J.:

The question discussed in this case would be a very interesting one if it had not been set at rest by the Circuit Court of Appeals for the

Third Circuit in the case of United States vs. Maro, 27 F. R. (2nd) 518. A procedural difficulty might be thought to intervene in that the question discussed is sought to be raised by demurrer. All desire, however, the real point made to be met regardless of mere formalities. There has, moreover, been a compliance with these, forasmuch as the defendant had the right to a bill of particulars, which has been furnished in the form of a stipulation of the fact, situation out of which the law asked to be ruled arises, and a bill of particulars when furnished becomes part of the bill of indictment. If a bill of indictment charges no criminal offense of which the court can take judicial cognizance, such question can be raised by demurrer. This
11 preliminary question being thus out of the way we face the real question raised. The indictment charges that the defendant, a citizen of the United States, was on board and one of the crew of an American ship at the time in a port under the jurisdiction of the King of Belgium in the inland waters of a river 250 miles from the sea and moored to a wharf erected on the land from which the ship was taking on her cargo, and that the defendant then and there assaulted and caused the death of a shipmate, who was also a citizen of the United States and a member of the same crew. This killing, the indictment further charges, was a felonious homicide denounced by and under the laws of the United States as a crime committed against its "peace and dignity." We may premise that the indictment does not charge, nor can this court try, the defendant for an offense against the laws of the Kingdom of Belgium, the laws of Pennsylvania, or for any offense other than one denounced by an act of Congress as a crime. The question thus becomes whether any act of Congress or law of the United States has conferred upon this court the judicial power to try him. The question has been discussed pro and con with great ability and with a commendable display of frankness and fairness. Where are we to look for a grant of the power in question? The United States attorney makes a very broad answer to this question by pointing to the commerce clause of the Constitution and to the grant of judicial power in cases of "admiralty and maritime jurisdiction." It is worthy of comment that the enumerated powers granted to Congress by section 8 of Article I include no reference to admiralty or maritime matters except in the power "to define and punish piracy, felonies committed
12 on the high seas and offenses against the laws of nations" and the power "to regulate captures on land and water," with the references to the Navy. The only direct reference to admiralty and maritime law is that in section 2 of Article III providing that the judicial power shall extend to this subject. We are unable to see that the law maritime has any bearing upon the subject under discussion, as admiralty courts are not, and under our Constitution can not be, courts of criminal jurisdiction. It is only by indirection and secondarily that admiralty jurisdiction enters into the question

before us, as when our act of Congress in defining a crime limits it to acts committed in places within the admiralty and maritime jurisdiction of the United States. Then, of course, resort must be had to the law maritime to identify such places. Beyond all question this ship, her master and crew were subjects of this law for whatever hearing this may have. Under the system of the administration of criminal justice in the United States, as distinguished from the several States, two things are required. Congress must have the constitutional power to legislate and it must have exercised the power by the passage of a law. There are no crimes against the United States other than statutory offenses. This distinction is of no present importance, because the Constitution grants to Congress the power "to define and punish * * * felonies committed on the high seas," and the present Criminal Code follows the phraseology of the Constitution, so that whatever one means the other means. The law we now have is a recurrence to the original act of 1790 and almost a reproduction of its phraseology. It is true that in 1825 an act was passed which went much beyond the law as we now have it. The reason given for the change of phrase-
13 ology was that there were a number of acts of varying phraseology and it was thought to be desirable to bring them all into uniformity. Another reason may have been to bring the statute law into undoubted conformity with the Constitution. Whatever the motive may have been the change was in fact made and the offense defined has as an ingredient the element that it was "committed on the high seas." We fail to see the bearing of the act of 1825 other than as informative and illustrative. The opinion of Attorney General Cushing expressed in 1856 (which, it is to be noted, was after the repeal of the act of 1825) confirms the view that an act to be a crime must have been committed on the "high seas." The high professional reputation of this distinguished official gives to his utterance the voice of authority. In the reading of the cases the distinction must be kept in mind between the "waters" which are within the territorial domain of the United States, and which may or may not be within the limits of one of our States, and waters which give the courts of admiralty maritime jurisdiction. There is no need to rule on the question of whether Congress has the constitutional power to denounce as a crime an act not committed on the "high seas," because the present Criminal Code makes no such attempt. The sole question is whether a vessel moored to a wharf 250 miles inland taking on or discharging her cargo is on the "high seas." The Circuit Court of Appeals for this circuit has decided this question for us and by this ruling we are bound.

Demurrer sustained and defendant discharged without day.

4 In United States District Court

[Title omitted.]

Order and decree granting further argument sur demurrer

Filed March 7, 1932

And now, to wit, this seventh day of March, A. D. 1932, on motion f Edward W. Wells, United States attorney, the court order and ecree that further argument be had in the above-captioned case on efendant's demurrer to the indictment; all proceedings to stay in he meanwhile and the court's order overruling the demurrer and ischarging the defendant sine die stayed pending the further order f the court.

By the court.

(s) DICKINSON, *J.*

5 In United States District Court

[Title omitted.]

)pinion in re demurrer to indictment sur motion for reargument

Filed Nov. 7, 1932

)ICKINSON, J.:

When this case was argued and ruled, it was upon the question f whether a vessel tied to a dock extending into a navigable stream, t a place miles above its mouth and far above any taint of salt ater, was at the time on the "high seas."

On the authority of U. S. vs. Maro, 21 (2nd) Fed. Rep. 533, af- rmed in 27 (2nd) Fed. Rep. 518, we ruled the question in the nega- ive. This meant that the demurrer interposed should be sustained nd the defendant discharged. We are asked to review this ruling, ecause while the Maro case is on all fours with this in its fact eatures, it differs in that in this case the indictment avers the offense f murder committed on an American vessel out of the jurisdiction f any State but within the admiralty and maritime jurisdiction of he courts of the United States, while the Maro case was argued and uled as a case of murder committed on the high seas. The United tates, we are told, accepted the ruling in the Maro case because it did not care to further stand for the proposition that a vessel 6 hundreds of miles from salt water was yet on the high seas.

Care was taken in consequence in this case to indict the de- endant not for a murder committed on the high seas but for a urder committed on an American vessel, out of the jurisdiction of ny State but within the maritime jurisdiction of the courts of the nited States. The distinction made is clear enough, but it takes s into the realm of constitutional law and raises as well many and

delicate questions of international relations, if not of international law.

Into these very interesting questions we see no need to go. It is agreed that this case and the Maro case are alike in their facts. The Maro case arose on habeas corpus. The defendant was open to indictment for any offense which arose out of the facts. He might in consequence have been indicted for the offense charged in this indictment. The Circuit Court of Appeals affirmed a judgment which discharged him without day. We must from this conclude that as he might have been indicted for the offense here charged, such an indictment could not be sustained. It follows that this indictment can not be sustained. We feel bound by the Maro case to so rule.

Motion for reargument denied.

17 In United States District Court for the Eastern District of Pennsylvania

No. 4932

UNITED STATES OF AMERICA

vs.

SANTOS FLORES

Order sustaining demurrer

Filed Nov. 7, 1932

And now, to wit, this 7th day of November, 1932, it is ordered that the demurrer to the indictment in the above-captioned matter be, and the same is hereby, sustained, and the defendant discharged without day; to which the plaintiff excepts and the exception is allowed.

By the court.

(S) DICKINSON, *J.*

18 In United States District Court

[Title omitted.]

Certificate as to statute construed

Filed Dec. 2, 1932

And now, to wit, the 16th day of November, A. D. 1932, the court hereby certify that the opinion rendered in the above-entitled case by this court on the third day of March, A. D. 1932, and the subsequent opinion thereto rendered on November 7, 1932, denying

motion for re-argument, were founded upon the court's construction of section 272 of the U. S. Criminal Code, approved March 4, 1909, 35 Stat. 1142, which is as follows:

"The crimes and offenses defined in this chapter shall be punished as herein prescribed:

"First. When committed upon the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or
19 when committed within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territor*ity*, or District thereof."

By the court.

(S) DICKINSON, *J.*

20 In United States District Court

[Title omitted.]

Petition for appeal

Filed Dec. 2, 1932

Comes now the United States of America, plaintiff in the above-entitled cause, by Edward W. Wells, United States attorney in and for the Eastern District of Pennsylvania, and conceiving itself aggrieved by the order entered in this cause on November 7, 1932, sustaining a demurrer to the indictment, prays that an appeal may be allowed from said order to the Supreme Court of the United States, and in connection with this petition the United States presents herewith its assignment of errors and statement of jurisdiction.

Dated, December 1, 1932.

UNITED STATES OF AMERICA,
By its attorney,
(s) EDWARD W. WELLS,
United States Attorney.

In United States District Court

Order allowing appeal

Filed Dec. 2, 1932

Appeal allowed this 2nd day of December, 1932.

(s) OLIVER B. DICKINSON,
United States District Judge.

21 In United States District Court

[Title omitted.]

Assignment of errors

Eiled Dec. 2, 1932

Comes now the United States of America, by Edward W. Wells, United States attorney in and for the Eastern District of Pennsylvania, and in connection with its appeal makes the following assignment of errors:

1. The District Court erred in sustaining the demurrer to the indictment.

2. The District Court erred in construing the following language.

"The crimes and offenses defined in this chapter shall be punished as herein prescribed:

"First. When committed * * * within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof,"

as used in section 272 of the Criminal Code, as applying only to such offenses when committed upon the high seas.

3. The District Court erred in holding that the crime of murder, committed upon a registered vessel of the United States, owned by citizens of the United States, when lying in a river within the territorial jurisdiction of a foreign sovereign, is not within the admiralty and maritime jurisdiction of the United States.

22 4. The District Court erred in holding that it had no jurisdiction to try the defendant for a murder committed on a registered vessel of the United States, owned by citizens of the United States, when lying in a river within the territorial jurisdiction of a foreign sovereign, on the ground that section 272, Criminal Code, has no application to such offenses.

Dated, December 1, 1932.

THE UNITED STATES OF AMERICA,
By its attorney,
(s) EDWARD W. WELLS,
United States Attorney.

23 [Citation in usual form, showing service on John V. Lovitt, filed Dec. 2, 1932, omitted in printing.]

24 In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed Dec. 7, 1932

To the CLERK,
U. S. District Court, Phila., Pa.:

In making up the record in the above-entitled case, kindly include the following papers and no others:

Docket entries.
Indictment.
Demurrer to indictment.
Stipulation of counsel as to certain facts.
Opinions, Dickinson, J., sustaining demurrer and discharging defendant without day.
Order of court directing further argument on demurrer, all proceedings to stay meanwhile.
Order of court sustaining demurrer, etc.
Certificate that jurisdictional question is involved.
Assignments of error.
Petition for appeal and order allowing same.
Citation.
Clerk's certificate.

(s) EDWARD W. WELLS,
United States Attorney.

25 [Clerk's certificate to foregoing transcript omitted in printing.]

26 In Supreme Court of the United States

Statement of points upon which appellant will rely, and designation of entire record for printing

Filed Dec. 28, 1932

Pursuant to rule 13 of this court, appellant specifies the following as the points upon which it intends to rely in the above-entitled cause:

1. The District Court erred in construing that portion of section 272 of the Criminal Code which provides that "The crimes and offenses defined in this chapter shall be punished as herein prescribed: First. When committed * * * within the admiralty and maritime jurisdiction of the United States and out of the juris-

diction of any particular State on board any vessel belonging in whole or in part to the United States or any citizen thereof,"
27 as applying only to such offenses when committed upon the high seas.

2. The District Court erred in holding that the crime of murder, committed upon a registered vessel of the United States, owned by citizens of the United States, when lying in a river within the territorial jurisdiction of a foreign sovereign, is not within the admiralty and maritime jurisdiction of the United States.

3. The District Court erred in holding that it had no jurisdiction to try the defendant for a murder committed on a registered vessel of the United States, owned by citizens of the United States, when lying in a river within the territorial jurisdiction of a foreign sovereign, on the ground that section 272, Criminal Code, has no application to such offenses.

4. The District Court erred in sustaining the demurrer to the indictment.

The appellant deems the entire record, as filed, to be necessary for the consideration of the above contentions.

THOMAS D. THACHER,
Solicitor General.

DECEMBER 28, 1932.

[File endorsement omitted.]

[Endorsement on cover:] Enter, Attorney General. File No. 37264. E. Pennsylvania, D. C. U. S. Term No. 567. The United States of America, appellant, vs. Santos Flores. Filed December 23, 1932. File No. 37264.

U. S. GOVERNMENT PRINTING OFFICE: 1933